

**STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, LOS ANGELES REGION**

)	DIRECTIVE FOR COMPLAINT NO. 98-024
)	ADMINISTRATIVE CIVIL LIABILITY FOR
In the matter of:)	VIOLATIONS OF THE CALIFORNIA WATER CODE
)	AND BOARD ORDER NO. 96-044
CITY OF THOUSAND OAKS)	(NPDES PERMIT NO. CA0056294)
)	WASTE DISCHARGE REQUIREMENTS FOR
)	THE CITY OF THOUSAND OAKS

YOU ARE HEREBY GIVEN NOTICE THAT:

1. The City of Thousand Oaks (hereinafter the City or Discharger) is alleged to have violated requirements contained in Board Order No. 96-044 and certain provisions of the California Water Code (CWC), for which the Regional Board may impose civil liability under Section 13385 of CWC.
2. On August 3, 1998, a hearing on this matter was held before the Regional Board during a public meeting in the Council Chambers, Camarillo City Hall, 601 Carmen Drive, Camarillo. The City and City's representatives had an opportunity to be heard and to contest the allegations in this Complaint and the imposition of civil liability by the Regional Board.
3. At the hearing, the Regional Board considered whether to affirm, reject or modify the proposed administrative liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
4. The City is alleged to have violated waste discharge requirements contained in Regional Board Order No. 96-044 (NPDES Permit No. CA0056294), by failing to adequately maintain its sewer system, which contributed to a rupture of a sewer line that resulted in a discharge of approximately 86 million gallons of raw sewage to Arroyo Conejo and downstream waters, including Conejo Creek, Calleguas Creek, Mugu Lagoon, and the Pacific Ocean, from February 3, 1998 to February 14, 1998. Known impacts from this discharge of raw sewage include:
 - a. Beach closures: In order to protect public health, over 29 miles of beaches had to be closed for up to 23 days.
 - b. Crop condemnation: In order to protect public health, crops on several farms located along downstream waterbodies had to be destroyed as a result of exposure to the raw sewage.
 - c. Public nuisance: The release of 86 million gallons of raw sewage for a period of 12 days created conditions of public nuisance.

Economic losses from these known impacts are estimated to total \$2,200,000 based on the preliminary information, which includes \$1,900,000 in losses from beach closures and \$300,000 in losses from crop condemnation. Impacts to ground water and to aquatic life are unknown.

THE FOLLOWING FACTS ARE THE BASIS FOR THE ALLEGED VIOLATIONS IN THIS MATTER:

BACKGROUND

5. The City provides wastewater collection and treatment services to domestic, commercial, and industrial facilities in the Thousand Oaks area through two publicly-owned treatment works, the Olsen Road Water Reclamation Plant and the Hill Canyon Wastewater Treatment Plant (HCTP). Both of these publicly-owned treatment works are owned, operated, and maintained by the City.

Most of the wastewaters from facilities in the City are collected through the HCTP sewer system, which consists of over 400 miles of sewer lines. These wastewaters are treated at HCTP, located at 9600 Santa Rosa Road, Camarillo, prior to discharge into the North Fork of Arroyo Conejo. The HCTP has a design capacity of 10.8 million gallons per day (MGD), and currently collects and treats an average wastewater flow of 9.4 MGD. Board Order No. 96-044, adopted by this Regional Board on June 10, 1996 (and subsequently amended), prescribes waste discharge requirements for the discharge of treated wastewaters from the HCTP.

6. The HCTP sewer system collects wastewaters from two major sewer tributary areas, designated Unit Y and Unit W. Units Y and W also collect wastewaters from smaller interceptors, such as Units A, E, F, LR, U, and X. Unit W accounts for two-thirds of the average flow to the HCTP.

Unit W was originally constructed in the early 1960s. The sewer line for Unit W collects and transports wastewaters along Arroyo Conejo (also referred to as the South Fork of Arroyo Conejo) to the HCTP. This sewer line is composed of four distinct reaches, as listed below (starting at the HCTP and proceeding upstream).

- Reach A: a pressure reach extending from the HCTP to the Calle Salto Lateral, including Manhole W-1;¹
- Reach B: a non-pressure flow reach between the Calle Salto Lateral and Manhole W-2;
- Reach C: a tunnel between Manholes W-2 and W-12; and
- Reach D: a non-pressure flow reach upstream of Manhole W-12.

Much of the trunk line for Unit W is located in and adjacent to the drainage that forms Arroyo Conejo. At several locations, the trunk line for Unit W actually crosses Arroyo Conejo; many of these crossings are in a "canyon" section of Arroyo Conejo, which has a steep gradient.

EVENTS LEADING UP TO THE FEBRUARY 3, 1998 SEWER LINE RUPTURE IN UNIT W

7. During a major storm in 1977 that caused high flows in Arroyo Conejo, approximately 30 feet of sewer line at a junction structure in lower Unit W (Reach A) ruptured and washed downstream. The City replaced the sewer line with a steel pipe sleeve and encased the pipe with concrete. As documented in a report titled "Unit W and Unit F Wastewater Interceptor Improvements," this incident "is precisely that type of occurrence which can happen during the high flood periods in the canyon" (Boyle Engineering, December 1997, page 4-3).
8. In 1979, the City upgraded 3,700 feet of a total 14,000 feet of sewer line within the canyon section of Arroyo Conejo (Reaches A and B of Unit W, between Manholes W-1 and W-2). This upgrade was needed "because the exposure of the pipeline to flood flows posed a serious threat to a washout or pipeline break" (Boyle Engineering, December 1997).

The high flows referenced in the Boyle Engineering report (December 1997) are a serious and continuing threat to the sewer lines in Unit W. The fact that the portion of sewer line that was

¹ The sewer line rupture on February 3, 1998 occurred in Reach A.

replaced in 1979 has been able to withstand subsequent high flows demonstrates that such an upgrade can adequately protect sewer lines from the effects of high flows in Arroyo Conejo.

9. In a letter dated October 16, 1989, the City advised this Board that replacement of a portion of Unit W interceptor (Reach D) had been scheduled and budgeted for Fiscal Year (FY) 1991/92 through FY 1993/94, for an estimated cost of \$2.6 million. The purpose of this replacement project was to rehabilitate a portion of Unit W, following an unauthorized discharge between August 12 and 14, 1989 of 800,000 gallons of raw sewage due to a partial blockage of the 8-inch Calle Alto portion of Unit W. Prior to implementing this replacement project, the City commissioned Kennedy/Jenks/Chilton to investigate the condition of Unit W and several small-diameter sewer lines, termed "canyon laterals," in the Unit W service area.
10. In early 1990, Kennedy/Jenks/Chilton investigated Unit W and several canyon laterals. As a result of the investigation, Kennedy/Jenks/Chilton "identified several reaches of the Unit W trunk and canyon laterals which appeared to be affected by structural, corrosion, or other integrity problems" ("Preliminary Design Report, Unit W (Phase I) Improvements," April 1991). In particular, Kennedy/Jenks/Chilton summarized the condition of the pressure reach of Unit W between Manhole W-1 and Calle Salto Lateral, near Manhole W-2, (a portion of Reach A and all of Reach B), the non-pressure flow reach between the Calle Salto Lateral, near Manhole W-12, and Manhole W-41 (Reach D), and the canyon laterals, and documented the following problems:
 - a. Longitudinal cracks in the concrete encasement were present in several sections of the pressure reach.
 - b. The canyon laterals all suffered from various degrees of coating failure and resultant corrosion.
 - c. The canyon lateral supports were failing in several places and did not provide adequate seismic protection.
 - d. The non-pressure flow reach of Unit W exhibited ongoing hydrogen sulfide corrosion.

To correct these problems, Kennedy/Jenks/Chilton recommended renovation, repair, and selective replacement projects for Unit W. Estimated capital and construction costs for the recommended project were approximately \$3.4 million and \$2.7 million, respectively. The City never fully implemented the corrective actions needed to complete repair of Unit W.

11. On March 10, 1995, the sewer line along a portion of Unit W (Reach D) ruptured during a period of high flows in Arroyo Conejo, resulting in an unauthorized discharge of 12 million gallons of raw sewage between March 10, 1995 and March 15, 1995. Rupture of the sewer line occurred when 24 feet of 21-inch diameter reinforced concrete sewer line upstream of manhole W-29 washed out, followed by a washout of another 60 feet of sewer line located near Hill Crest Drive. The City replaced 85 feet of flood damaged sewer line and, as a short-term solution, installed 140 linear feet of riprap protection to compensate for the loss of bank protection.

The March 10, 1995 sewer line rupture provided a clear warning that other portions of the Unit W sewer line were at risk of catastrophic failure in storm events. Moreover, in a memorandum dated November 21, 1995, from Don Nelson, Public Works Director, to Grant R. Brimhall (who was the City Manager at that time), Mr. Nelson clearly stated that:

"Facilities that require immediate attention include the Digestion Replacement and Expansion project, Corrosion Control Project, and the Unit W Replacement Project. The Unit W collector line runs through the South Fork of the Arroyo

Conejo. Sections of this line have washed out, resulting in major raw wastewater spills on several previous occasions. Replacement of this collector line is increasingly critical" (emphasis added).

12. In July 1995, staff at the City's Department of Public Works proposed a \$75 million capital improvement project for expansion and upgrade of HCTP from 1995 to 2009, which included a \$4.1 million improvement project for Unit W, to be implemented from 1995 to 1997. Although the City Council approved the \$75 million expansion and upgrade proposal in October 1995, the Council did not approve funding for the Unit W improvement project. As a result, the City did not implement critical improvements needed to protect the Unit W sewer system.
13. On January 9, 1996, City staff again warned of the critical need to replace sewer lines in canyons. Failure of these sewer lines could release raw sewage and result in "destructive impacts on the flora and fauna of the canyons and downstream wetlands," as stated in a memorandum dated January 9, 1996, from Donald H. Nelson and Mark G. Sellers, City Attorney, to Grant R. Brimhall. City staff expressed concern regarding the integrity of the sewer line in the canyons and the delay in repairs, which could increase the risk of sewer line rupture.
14. As documented in the January 9, 1996 memorandum, City staff proposed a sewer fee increase to fund the Unit W improvement project. At that time, the City's monthly sewer service charge totalled \$10.50 per residential unit. This service charge, which was the lowest rate charged in the County of Ventura and which was, as acknowledged by the City, well below the Statewide average, had not been adjusted since 1987. However, the City Council did not approve the fee increase until 1997.
15. In September 1997, members of the City Council reached an agreement to fund the Unit W sewer improvement project along with certain other upgrade projects, through an increase in the HCTP sewer service charge (effective November 1, 1997).
16. Before proceeding with the Unit W sewer improvement project, the City commissioned another investigation of the City's sewer lines, retaining Boyle Engineering to analyze the condition of Units W and F Wastewater Interceptors within and adjacent to Arroyo Conejo. Boyle Engineering identified sections where sewer lines were exposed, and documented the risk of sewer line rupture (December 1997). As a temporary measure, the City installed riprap in an attempt to protect those portions of the Unit W sewer line that were exposed at stream crossings.

Recommendations set forth in the Boyle Engineering report (December 1997) included, among others, replacement of a portion of the existing sewer line with a new sewer line between the Unit W/F Junction Structure and Manhole W-1. Estimated costs for the overall recommended project and for the construction of a new sewer line between the Unit W/F Junction Structure and Manhole W-1 are \$8.4 million and \$2.4 million, respectively.

SEWER LINE RUPTURE IN UNIT W ON FEBRUARY 3, 1998

17. Rain from February 1, 1998 to February 3, 1998 increased flows in Arroyo Conejo. Preliminary unofficial data² collected by the Ventura County Flood Control District indicate that rainfall totalled 0.24 inches on February 1, 1998, 1.18 inches on February 2, 1998, and 2.48 inches on February 3, 1998 at Rain Gage Station No. 630, located along Conejo Creek (downstream of Arroyo Conejo). Preliminary unofficial data² collected by the Ventura County Flood Control District

² Data collected from the Ventura County Flood Control District are preliminary and unofficial. Final data have not yet been released.

indicate that the peak discharge in Conejo Creek at Alert Stream Gage No. 629 (next to Rain Gage Station No. 630) was 6,160 cubic feet per second (cfs).

Additional data were obtained from Robin Jester, an engineer with the Ventura County Flood Control District, in a telephone communication on May 11, 1998 with Regional Board staff Rebecca Chou. According to Ms. Jester, preliminary unofficial data collected from Stream Flow Gage Station No. 800, located along Conejo Creek in the same place as Rain Gage Station No. 630 and Alert Stream Gage No. 629, indicated that the rain on February 3, 1998 generated a peak flow of 7,000 cfs. Ms. Jester estimated that this discharge was equivalent to a flood having a predicted frequency of once in 5 to 10 years, based on 35 years of historical data collected from Stream Flow Gage Station No. 800.²

18. During the morning of February 3, 1998, a sewer line along a portion of Unit W (Reach A) that crosses Arroyo Conejo ruptured. The exact time that this rupture occurred on the morning of February 3, 1998 has not yet been confirmed.

The rupture resulted in an unauthorized discharge of 86 million gallons of raw sewage to waters of the state between February 3, 1998 and February 14, 1998. In a report titled "Cleanup and Abatement Order No. 98-016 and Follow-Up Upset Report; City of Thousand Oaks - Unit W Sewer Interceptor for Hill Canyon Wastewater HCTP" (February 20, 1998), the City provided the following information:

- a. On February 3, 1998, at 5:30 a.m., staff at the HCTP observed a sudden decrease in the headworks flow. Subsequently, staff at the HCTP discovered that the Unit W sewer line was leaking raw sewage into Arroyo Conejo. However, City staff were not able to adequately survey the area that same day, due to the unsafe conditions created by high flows in Arroyo Conejo. The storm water runoff increased the stream depth and width by several feet, making it very difficult to access the sewer line.

On February 4, 1998, City staff determined the exact location of the sewer line rupture. Approximately 20 feet of the existing 30-inch diameter sewer line had washed out, at a location 800 feet upstream of the W/F Junction Structure (between W/F Junction and Manhole W-1) at the Arroyo Conejo crossing, spilling an estimated 6 million gallons per day of raw sewage into Arroyo Conejo. A general contractor, retained by the City under emergency contracting procedures, began emergency repair work on February 4, 1998.

On February 5, 1998, a section of corrugated steel pipe was placed in the location where the washed-out pipe had vacated and, by February 6, 1998, 4 a.m., 140 cubic yards of concrete encasement were placed over the repair area. The City resumed use of the sewer line at a flow of 6 million gallons per day on February 6, 1998, at 7 a.m. At about 8:15 a.m. the same day, the flow to HCTP from that line dropped to zero, indicating that the repair work had not held.

Rains on February 6 and February 7 and the high flow in Arroyo Conejo made it impossible to immediately attempt another repair. Repair work was resumed on February 8, 1998, and the sewer line was successfully repaired by February 14, 1998, at 3:30 a.m. Between February 3 to February 14, 1998, approximately 70 million gallons of raw sewage were discharged into Arroyo Conejo during the emergency repair efforts.

- b. In order to repair the ruptured portion of the Unit W sewer line, the City elected to bypass raw sewage, resulting in the discharge of an additional 15.7 million gallons of raw sewage into Arroyo Conejo, as detailed below.

<u>Location</u>	<u>Start date/time</u>	<u>End date/time</u>	<u>Estimate discharge (million gallons)</u>
Shapel lateral	2/10/98 10:30 a.m.	2/13/98 5:30 p.m.	0.13
Box Canyon manhole W-7-1 and W-7-2	2/10/98 1:30 p.m.	2/13/98 5:15 p.m.	0.41
Unit W manhole W-19 and W-22	2/5/98 7:30 p.m.	2/6/98 7:00 a.m.	3.6
Unit W manhole W-19, W-22, and W-18-3	2/11/98 4:30 p.m.	2/13/98 3:30 a.m.	11.1
Unit F 12-inch Interceptor 500 feet upstream of W/F Junction Structure	2/10/98 4:00 p.m.	2/13/98 6:00 p.m.	0.46

- c. An additional 170,000 gallons of raw sewage were discharged into Arroyo Conejo when an 8-inch suspension line at manhole W-38 washed out, on February 3, 1998 and then again on February 6, 1998.
19. On February 4, 1998, Regional Board staff Veronica Cuevas-Alpuche and Carolyn Hunter inspected the site of sewer line rupture and reviewed the circumstances of the unauthorized discharge with Donald H. Nelson. As documented in a Regional Board inspection report dated February 10, 1998, Mr. Nelson conveyed the following information:
 - a. The City's Financial Plan included replacement of a large section of the Unit W sewer line during FY1995/96 and FY1996/97, including the section of sewer line that ruptured on February 3, 1998.
 - b. The replacements to the large section of Unit W were not implemented as planned, since funding was not available. Members of the City Council had been discussing an increase in sewer rates to fund sewer line construction for a long time, but were not able to resolve their differences until late 1997. Accordingly, commencement of sewer line construction had been delayed until the summer of 1998.
 20. On February 9, 1998, the Regional Board's Executive Officer issued a Cleanup and Abatement Order (CAO) No. 98-016 to the City, directing that the City implement corrective action and assess impacts from the unauthorized discharge that started on February 3, 1998. In a letter dated March 16, 1998, the City referenced the Boyle Engineering report (December 1997) and submitted blueprints with designs for improvements to Unit W. The Unit W improvements specified in this report included, among others, that portion of Unit W that ruptured on February 3, 1998. The improved sewer line was designed to withstand scouring action in the canyon, based on past storm events and accelerating rates of erosion. Design specifications included the use of reinforced concrete encasement for all stream crossings.
 21. On February 22, 1998, the Los Angeles Times printed a letter to the editor from Elois Zeanah, a City Council Member, regarding an editorial titled "Failure of Leadership." The letter contains the following statements by City Council Member Elois Zeanah:

Unit W canyon lines were identified for repair/replacement in 1987.

The \$1.5 million cost to repair/replace Unit W lines was always and still is to be paid 100% with developer fees, not the residents' fee increase. Specifically, money for this work has been garnered from developers since 1987.

From 1992 to 1996, approximately \$7 million of sewer fees were transferred to other city funds, primarily to help pay for the Civic Arts Plaza. Some were repaid. Some were transferred as permanent expenses.

22. In a letter dated April 16, 1998 to the Regional Board, the City clearly stated that the proposed design for a replacement sewer line (in Reach A) would include improvements that would enable the sewer line to withstand a 100-year flood event.

CONCLUSION

23. Regional Board staff conclude that the rupture of a portion of the sewer line in Unit W on February 3, 1998 and the resulting unauthorized discharge by the City from February 3, 1998 to February 14, 1998 was avoidable, in spite of heavy rains and high flows in Arroyo Conejo on February 3, 1998. As set forth in the facts stated above, the City failed to take appropriate action to safeguard portions of the Unit W sewer system from failure, despite:
 - a. previous ruptures in portions of Unit W due to high flows in Arroyo Conejo; and
 - b. documented investigations indicating that portions of Unit W were at risk of rupture (in particular, those portions of Unit W located in the canyon section of Arroyo Conejo, which has a steep gradient and is subject to scouring action during high flows).

The failure of the City to take appropriate action in a timely manner to address long-standing concerns about the integrity of the sewer line unreasonably extended the time during which the pipeline continued to deteriorate and was at increasing risk of rupture.

IMPACTS RESULTING FROM THE SEWER LINE FAILURE ON FEBRUARY 3, 1998

24. In a February 3, 1998 press release, the County of Ventura Environmental Health Division advised the public to avoid contact with water in Arroyo Conejo, Arroyo Santa Rosa, Conejo Creek, Calleguas Creek, Mugu Lagoon, and 20 miles of beaches along the Pacific Ocean (from Channel Islands Harbor to the Los Angeles/Ventura county line). Beaches were officially closed up to 17 days, from February 3 to February 20, 1998, due to the magnitude of the discharge of raw sewage into Arroyo Conejo and downstream waters from February 3, 1998 to February 14, 1998, and due to the presence of high coliform counts in coastal waters.
25. The County of Los Angeles Department of Health Service (LACDHS) officially closed approximately 9 miles of beaches from the Los Angeles/Ventura county line to Point Dume for 23 days, from February 5 to February 28, 1998. While LACDHS generally issues beach warnings due to high coliform counts in coastal waters that typically result from storm water flows, LACDHS determined that the magnitude of raw sewage discharged into Arroyo Conejo and downstream waters, from February 3, 1998 to February 14, 1998, necessitated that the beach warnings be upgraded to official beach closures.

26. Mugu Lagoon is one of southern California's largest and least disturbed wetlands, and provides valuable habitat for birds and other wildlife, some of which are threatened or endangered species. The discharge of 86 million gallons of raw sewage into Arroyo Conejo flowed downstream into Mugu Lagoon, where it may have impacted important biological resources; such impacts, however, have not been fully assessed.
27. The discharge of raw sewage into Arroyo Conejo and downstream waters, from February 3, 1998 to February 14, 1998, contaminated farmlands along Conejo Creek and resulted in significant crop loss. On February 26, 1998, the California State Department of Health Services (DHS), Food and Drug Section, issued an Embargo Notice to Boskovitch Farms, a produce distributor for Foster Ranch, Mary Smith Ranch, and Beltramo Ranch, for crops on 82 acres of farmland. This restricted acreage was reduced to 68 acres after testing of a lettuce crop on 14 acres demonstrated that the lettuce crop was not contaminated. DHS Records of Voluntary Condemnation and Destruction, dated March 19, 1998, indicate that the 68 acres of condemned crops were destroyed by disking in place. The estimated loss of crops is approximately \$300,000. Boskovitch Farms is in process of applying for reimbursement from the City for the loss of crops.
28. In an economic impact study conducted by the State Water Resources Control Board, Office of Statewide Consistency, Economics Unit, staff concluded that the loss to the public resulting from beach closures, extending 29 miles for up to 23 days in Los Angeles and Ventura Counties, totals approximately \$1.9 million. Furthermore, staff of the US Environmental Protection Agency, Region IX, Office of Clean Water Act Compliance, calculate that the benefit in avoided costs from postponing the Unit W improvement project from February 1998 to October 1998 totals \$74,000, based on the cost of reconstructing a new sewer line, as proposed in the Boyle Engineering report (December 1997).

ALLEGED VIOLATIONS:

29. The discharge of raw sewage violates the following requirements contained in Board Order No. 96-044:
 - I. Discharge Limitation, A. Effluent Limitations (Page 6)

"1. Waste discharged shall be limited to treated municipal wastewater only, as proposed."
 - III. Receiving Water Requirements, A. Receiving Water Limitations (Page 14)

"6. The wastes discharged shall not cause the receiving waters to contain any substance in concentrations that adversely affect any designated beneficial use."
 - VI. Requirements and Provisions (Page 16)

"1. Discharge of wastes to any point other than specifically described in this Order and permit is prohibited and constitutes a violation thereof."
- Standard Provisions, A. General Requirements (page N-1)
- "3. The discharge shall not cause a violation of any applicable water quality standards for receiving waters adopted by the Regional Board or the State Water

Resources Control Board as required by Federal Clean Water Act and regulations adopted thereunder.”

Standard Provisions, B. General Provisions (page N-2)

“5. Any discharge of wastes at any point(s) other than specifically described in this Order is prohibited, and constitutes a violation of the Order.”

Standard Provisions, B. General Provisions (page N-4)

“12. The discharger shall take all reasonable steps to minimize or prevent any discharge that has a reasonable likelihood of adversely affecting human health or the environment.”

Standard Provisions, B. General Provisions (page N-4)

“13. The discharger shall at all times properly operate and maintain all facilities and systems of treatment and control....that are installed or used by the discharger to achieve compliance with this Order.”

30. As the owner, operator, and sole permittee, the City bears responsibility to comply with all provisions of Order No. 96-044.
31. Sections 13376 and 13377 of the CWC prohibit the discharge of pollutants to surface waters, except as authorized by waste discharge requirements that implement the provisions of the Federal Clean Water Act.
32. Section 13385 (a) of the CWC states that “any person who violates any of the following shall be liable civilly in accordance with subdivisions (b), (c), (d), (e), and (f): ... (2) Any waste discharge requirements or dredged and fill material permit.”
33. Section 13385 (c) of the CWC states that “Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the sum of both of the following:
 - (1) Ten thousand dollars (\$10,000) for each day in which the violation occurs; and
 - (2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) times the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.”

PROPOSED CIVIL LIABILITY:

34. The total maximum civil liability authorized by the California Water Code is \$858,810,000, which includes \$120,000 under Section 13385(c)(1) and \$858,690,000 under Section 13385(c)(2).
 - a. Under Section 13385(c)(1), the maximum civil liability that could be imposed by the Regional Board for violation of the terms and conditions of Order No. 96-044 is \$10,000 per day per violation. The City is alleged to have violated Board Order No. 96-044 for 12 days

during the period of February 3, 1998 through February 14, 1998. Therefore, the maximum liability under (c)(1) is:

$$12 \text{ days} \times \$10,000 \text{ per day} = \$120,000$$

- b. Under Section 13385(c)(2) of California Water Code, the maximum civil liability that could be imposed by the Regional Board for violation of the terms and conditions of Order No. 96-044 is ten dollars per gallon of discharge for volumes greater than 1,000 gallons. Therefore, the maximum liability under (c)(2) is:

$$[85,870,000 \text{ gallons} - 1,000 \text{ gallons}] \times \$10 = \$858,690,000$$

35. Pursuant to the CWC Section 13385(e), the Regional Board is required to consider the following factors in determining the amount of civil liability to be imposed: the nature, circumstances, extent, and gravity of the violations; with respect to the violator, the ability to pay; any prior history of violations; the degree of culpability; economic benefit or savings, if any, resulting from the violation; and other matters as justice may require.

- a. Nature, circumstances, extent, and gravity of the violations: The City discharged a total of 85,870,000 gallons of raw sewage from February 3, 1998 to February 14, 1998, in violation of Order No. 96-044. As a result, raw sewage created a condition of pollution and nuisance; crops on several farms located downstream of the point of discharge had to be condemned; and approximately 29 miles of beach along the Pacific Ocean in Los Angeles and Ventura Counties were closed for up to 23 days.

Regional Board staff believe that a reduction from the maximum civil liability is warranted. The City has undertaken to compensate growers for crop losses due to exposure to the raw sewage and subsequent crop condemnation. Furthermore, heavy rains and high flows in Arroyo Conejo following the sewer line rupture on February 3, 1998 hindered the City's ability to immediately repair the ruptured sewer line until February 14, 1998. While the City diligently tried to repair the sewer line, raw sewage was discharged at a rate of about 6 MGD.

- b. The ability of the City to pay: Payment of the total maximum civil liability authorized by the CWC would impose a financial hardship on the City, and could affect the ability of the City to continue operating and maintaining the HCTP. Therefore, a reduction from the civil liability is warranted.
- c. Prior history of violations: A review of the City's spill record indicates 10 incidents of unauthorized discharges of raw sewage over the past ten years. Several incidents occurred along various sections of Unit W, two of which represented significant spills. The City has been aware of the risk of sewer line rupture in Unit W, but did not expeditiously implement long-term solutions to solve the problems. The result was a reoccurrence of a sewer line rupture in a stream crossing on February 3, 1998. Therefore, no reduction from the maximum civil liability is warranted.
- d. Degree of culpability: The Unit W trunk line is located in and adjacent to the drainage that forms Arroyo Conejo; at several points, the Unit W trunk line crosses the Arroyo Conejo as it feeds sewage to the HCTP. Since this line is located in a stream bed, the City should have exercised additional care to ensure the structural integrity of the sewer line, given the risks inherent in the location of Unit W, the substantial environmental impacts that could occur from a rupture, and the difficulty of repair in the event of a rupture. The rupture on February 3, 1998 was preceded by several other ruptures, one of which, in March 1995,

closely parallels the facts of the February 3, 1998 rupture. With such warning, the City identified a clear and imminent need for substantial improvements necessary to avoid a reoccurrence of a rupture. In response, the City identified funds needed to effect a repair as well as funds for a major sewage plant upgrade. However, the City Council did not act to approve funds for the necessary repair until late 1997.

As indicated in a letter from City Council Member Elois Zeanah that was printed in the Los Angeles Times on February 22, 1998, the City had clear knowledge that all or part of Unit W needed substantial replacement and repair as early as 1987. This need had been repeatedly documented in a Kennedy/Jenks/Chilton report (April 1991), in staff memoranda (1995 and 1996), and in a Boyle Engineering Report (December 1997).

The City did not implement the needed improvements as proposed, even though the City had experienced several similar incidents and knew that Unit W needed to be repaired or replaced. The project continued to be delayed and funds earmarked for use to repair sewer systems may have been diverted to other uses.

Finally, the long-term corrective action plan submitted by the City to the Regional Board on March 16, 1998 indicated that the construction design for the new Unit W sewer line addresses the impacts of streambed scouring, as evidenced by past storm events and long-term erosion. The April 16, 1998 letter from the City to the Regional Board also confirmed that the proposed design should withstand a 100-year flood event. Had the repairs been made earlier, this rupture and unauthorized discharge would not have occurred. Therefore, no reduction in the civil liability is recommended.

- e. Economic benefit or savings: The City realized an economic benefit by postponing replacement of the Unit W sewer line. Therefore, no reduction in the civil liability is warranted.
 - f. Other matters as justice may require: An additional matter to consider includes time spent by the staff of the Regional Board in evaluating the incidents of violation and preparing this Order and related documents. The Regional Board charges a rate of \$70 per hour for staff cost recovery. With total staff time of approximately 300 hours as of May 15, 1998, staff costs incurred by the Regional Board are estimated to total \$21,000.
36. After consideration of the factors listed in Section 13327 and Section 13385(e) of the CWC, the Regional Board Executive Officer issued an administrative civil liability on May 15, 1998, in the amount of \$2,115,000, which included: an economic impact of \$1,900,000 from the beach closures; a benefit of \$74,000 in avoided costs due to project delay; a statutory assessment of \$120,000 at \$10,000 per day for discharge of 12 days; and reimbursement of \$21,000 for Regional Board staff costs as of May 15, 1998.
37. Upon consideration and deliberation of the evidence presented at the hearing on August 3, 1998, the Regional Board upheld imposition of an administrative civil liability. Based on new information, staff recommended a modified assessment of \$2,293,000, which includes: (a) a recalculated economic impact of \$1,800,000 from the beach closures; (b) a recalculated benefit of \$334,000 in avoided costs due to project delay; (c) a statutory assessment of \$120,000 at \$10,000 per day for a discharge duration of 12 days; and (d) reimbursement of \$39,000 for Regional Board staff costs as of August 3, 1998.

Upon consideration of staff's recommendation and other evidence presented during the Board hearing, the Regional Board affirmed the modified assessment of \$2,293,000, based on the rationale as follows: (a) an economic impact from beach closures that may have been as low as

\$600,000; (b) a statutory assessment of \$120,000, calculated at \$10,000 per day for a discharge duration of 12 days; (c) \$1,717,400 for impacts that may have occurred to ecological resources, public health, and economic losses due to the value of perception of pollution, which were assessed at two cents per gallon for a discharge of 85,870,000 gallons; and (d) staff costs of \$39,000. Although the Regional Board's rationale for calculating the assessment totals \$2,476,400, the Board decided to approve staff's recommendation of \$2,293,000.

38. Upon further deliberation of the evidence, the Regional Board directed payment of the total assessment of \$2,293,000 as follows:
- (a) a cash payment of \$100,000, payable to the Cleanup and Abatement Account at the State Water Resources Control Board. The City has the option of making this payment over five years, starting with an installment of \$20,000 on September 3, 1998, followed by four annual installments of \$20,000 on September 3rd of the following four years. Annual installments shall include interest, calculated in arrears on the outstanding balance over the previous year, at a rate equivalent to the yield of a five-year US Treasury Note as established on September 3, 1998.
 - (b) a cash payment of \$39,000 for reimbursement of staff costs, due and payable to the Cleanup and Abatement Account at the State Water Resources Control Board on September 3, 1998.
 - (c) \$2,154,000 to fund supplemental environmental projects (SEPs), to be completed within 5 years. The SEPs should be used, in part, to develop Total Maximum Daily Loads (TMDL) for the Calleguas Creek Watershed, including Mugu Lagoon, and Ventura County shoreline monitoring. A proposal for these and other projects the City proposes is due to the Regional Board by September 11, 1998.
39. This enforcement action is exempt from the provisions of the California Environmental Quality Act, California Public Resources Code, Section 21000, et seq., in accordance with California Code of Regulations, Title 14, Chapter 3, Section 15321.

IT IS HEREBY ORDERED that, pursuant to Section 13323 of the California Water Code, the City of Thousand Oaks shall:

- (a) make a cash payment of \$100,000, payable to the Cleanup and Abatement Account at the State Water Resources Control Board. The City has the option of making this payment over five years, starting with an installment of \$20,000 on September 3, 1998, followed by four annual installments of \$20,000 on September 3rd of the following four years. Annual installments shall include interest, calculated in arrears on the outstanding balance over the previous year, at a rate equivalent to the yield of a five-year US Treasury Note as established on September 3, 1998.
- (b) make a cash payment of \$39,000 for reimbursement of staff costs, due and payable to the State Water Resources Control Board on September 3, 1998.
- (c) fund supplemental environmental projects, in the amount of \$2,154,000, to be completed within 5 years. The SEPs should include TMDL for the Calleguas Creek Watershed and Ventura County shoreline monitoring. A proposal for these and other projects the City proposes is due to the Regional Board by September 11, 1998. The proposal for SEPs will be publicly-noticed and subject to approval by the Regional Board.

In the event that the City fails to comply with the requirements of this Directive for Complaint No. 98-024, the Executive Officer is authorized to refer this matter to the Office of Attorney General for enforcement.

I, Dennis A. Dickerson, do hereby certify that the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board on August, 3, 1998.

Dated: August 3, 1998
/RC

DENNIS A. DICKERSON
Executive Officer